

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SANTIAGO LOPEZ,

Plaintiff-Appellant,

v

DONALD H. HANN,

Defendant-Appellee.

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UNPUBLISHED

September 29, 2005

No. 262659

Ottawa Circuit Court

LC No. 05-051316-NM

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted defendant's motion for summary disposition in this legal malpractice case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1996 plaintiff retained defendant<sup>1</sup> to represent him in a criminal matter in which he had been charged with operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625, and domestic assault, MCL 750.81. Plaintiff pleaded guilty pursuant to an agreement that provided that his conviction of domestic assault would be expunged from his record upon his successful completion of probation. Plaintiff's order for discharge from probation, entered on January 5, 1999, does not indicate that the conviction for domestic assault had been expunged from his record. In 1999, plaintiff sought defendant's assistance in having his driver's license reinstated. Defendant failed to advise plaintiff that the discharge order did not indicate that the domestic assault conviction had been expunged.

Plaintiff sought employment in the security area but was rejected for such employment on several occasions, and on August 17, 2004, he was informed that the existence of a conviction for domestic assault on his record prevented his being hired as a security guard. On February 3, 2005, plaintiff filed suit alleging that defendant's failure to ensure that his domestic assault conviction was expunged constituted legal malpractice, and that he could not have discovered his claim until August 17, 2004. Defendant moved for summary disposition pursuant to MCR

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<sup>1</sup> Plaintiff also retained the law firm of Hann Persinger, PC, but the parties stipulated to entry of summary disposition in favor of this defendant.

2.116(C)(7) and (10). Defendant argued that plaintiff's claim was barred by the statute of limitations, and contended that plaintiff should have discovered the error when he obtained the order in 1999. The trial court granted the motion pursuant to MCR 2.116(C)(7), concluding that no issue of fact existed as to whether plaintiff should have discovered the error on the discharge order when he obtained the order in 1999.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

In order to establish a claim of legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged. *Charles Reinhart Co v Winimko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). The statute of limitations for a claim charging legal malpractice is two years. MCL 600.5805(6). The two-year limitations period is subject to a six-month discovery rule exception. A legal malpractice claim may be commenced after the expiration of the two-year limitations period if it is commenced "within 6 months after the plaintiff discovers or should have discovered the existence of the claim." MCL 600.5838(2). The burden of proving that the exception is applicable is on the plaintiff. Whether a plaintiff has discovered a claim is tested subjectively, but whether he should have discovered a claim is tested objectively by application of a reasonable person standard. *Levinson v Trotsky*, 199 Mich App 110, 112; 500 NW2d 762 (1993). A plaintiff has discovered a claim if he has discovered a possible cause of action. A plaintiff need not know of a likely cause of action to be deemed to have discovered a claim. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994).

Plaintiff's probation discharge order clearly lists both offenses of which he was convicted by plea. The order contains a box which may be checked to indicate that a conviction involving spousal abuse has been set aside and dismissed. This box was not checked on plaintiff's discharge order in 1999 when plaintiff showed the order to defendant. The wording of the form is not complicated, and plaintiff has not alleged that he has difficulty reading the English language. Therefore, his claim that as a non-attorney he could not have been expected to discover the omission is without merit. Though defendant may have been negligent in his representation of plaintiff in 1999, the trial court correctly found that there is no issue of fact as to whether, under a reasonable person standard, plaintiff should have discovered the existence of a possible cause of action within six months after the expiration of the two-year limitations period. *Levinson, supra*; *Gebhardt, supra*.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey